

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 29, OF THE MONTANA CONSTITUTION PROVIDING THAT REAL AND PERSONAL PRIVATE PROPERTY MAY NOT BE TAKEN OR DAMAGED, IN WHOLE OR IN PART, BY GOVERNMENT ACTION WITHOUT JUST COMPENSATION TO THE FULL EXTENT OF THE LOSS HAVING BEEN PAID TO THE PROPERTY OWNER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the United States Supreme Court, in *Pennsylvania Coal Company v. Mahon*, 260 U.S. 393, 416 (1922), stated "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change"; and

WHEREAS, Montana and the United States in general are facing a significant economic recession, the likes of which the country has not endured since the great depression; and

WHEREAS, this referendum is intended to safeguard the property interest of Montanans and lawful business entities, ensuring that their rights and corresponding investment-backed expectations are protected from government action that decreases the value of those property interests.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Article II, section 29, of The Constitution of the State of Montana is amended to read:

**"Section 29. Eminent domain -- taking of or damage to private property.** (1) Private property shall not be taken or damaged for public use by condemnation without just compensation to the full extent of the loss having been first made to or paid into court for the owner.

(2) Private property, whether real or personal in nature, shall not be taken or damaged, in whole or in part, by government action without just compensation to the full extent of the loss having been first made to or paid into court for the owner.

(3) In the event of litigation, just compensation shall include necessary expenses of litigation to be

1 awarded by the court when the private property owner prevails."

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3 NEW SECTION. Section 2. Severability. If a part of this amendment is invalid, all valid parts that are  
4 severable from the invalid part remain in effect. If a part of this amendment is invalid in one or more of its  
5 applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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7 NEW SECTION. Section 3. Effective date. This amendment is effective on passage and approval.

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9 NEW SECTION. Section 4. Retroactive applicability. This amendment applies retroactively, within  
10 the meaning of 1-2-109, to proceedings that have been commenced but have not been completed on the effective  
11 date of this amendment.

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13 NEW SECTION. Section 5. Submission to electorate. This amendment shall be submitted to the  
14 qualified electors of Montana at the general election to be held in November 2010 by printing on the ballot the  
15 full title of this act and the following:

16 [] FOR providing that real and personal property may not be taken or damaged by government  
17 action without compensation to the property owner.

18 [] AGAINST providing that real and personal property may not be taken or damaged by  
19 government action without compensation to the property owner.

20 - END -